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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.S., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

E071764

(Super.Ct.No. J276011)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander,
Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant
and Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County
Counsel for Plaintiff and Respondent.

Defendant and appellant J.L. appeals from the juvenile court's order removing her from consideration as a relative placement for B.S. (minor; a girl, born March 2017) under Welfare and Institutions Code¹ section 366.21. For the reasons set forth below, we shall affirm the juvenile court's findings and orders.

FACTUAL AND PROCEDURAL HISTORY

On April 23, 2018, minor came to the attention of San Bernardino County Children and Family Services (CFS) when it received a referral for general neglect. Minor lived with M.H. (mother), P.S. (father; collectively, parents), and her paternal grandmother J.L. (PGM). According to the referral, law enforcement reported to the home after they received reports of shots being fired from the home. During the investigation, law enforcement discovered multiple illegal firearms, including an AR-15 with a 40-round magazine, a 9-mm handgun, and a bulletproof vest in the home. Many of the items were located near minor's living area. Moreover, law enforcement found 10 grams of heroin, cocaine, and methamphetamine along with drug paraphernalia in the home, with "much" of the heroin found under minor's crib. Father admitted to having used heroin earlier that day. Father, a convicted felon, was arrested for possession of firearms and narcotics.

On May 2, 2018, when a social worker made an unannounced visit to the home, she found parents under the influence of a controlled substance. Father explained that he had been released from custody on bail. Parents admitted to using heroin. The social

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

worker found minor sleeping in a car seat in the middle of a day bed. Minor was temporarily taken into protective custody pursuant to a detention warrant. On May 4, 2018, CFS filed a section 300 petition under subdivision (b)—failure to protect.

At the May 7, 2018, detention hearing, parents were present. The court ordered them to drug test. PGM was also present; she filled out a Form CFS 309 A, entitled, “Relative: Family Find and ICWA Inquiry.” On the form, PGM indicated that she was interested in minor’s placement; however, PGM noted that both parents resided with her in her home. As to the other relatives, the paternal aunt and uncle did not qualify for emergency placement because the uncle had a criminal history with a disorderly in public charge and a possession charge. The juvenile court found that placement with the paternal aunt and uncle was not appropriate. Other relatives or non-extended family members declined consideration for placement.

At the time of the jurisdiction and disposition hearing on May 29, 2018, minor was in foster care. In the jurisdiction and disposition report, CFS recommended to find the allegations in the petition true, and to offer family reunification services to parents. Parents’ drug test results from the detention hearing came back positive for cocaine and opiates. Parents also missed the jurisdiction and disposition interview date “due to a flat tire.” However, when the social worker made contact with parents on the day of the interview, mother sounded like the social worker had woken mother up, or mother was intoxicated “as she was very difficult to understand.” At the interview a few days later, father disputed the allegations as inaccurate and did not understand why CFS had concerns about minor’s wellbeing. Father admitted that he started using cocaine when he

was about 18 years old. Father stated that his current use of cocaine was “rarely.” He also admitted that he used “pills and weed” when he was 17 or 19 years old. Father stated that he was taking morphine from “an old prescription” because of a previous injury. He stated that he had tried to stop using morphine, but he was unsuccessful. Because father had spent 10 days prior to the detention in custody, he thought that his drug test results would be “more than likely” clean. Regarding the possession of illegal substances, father was inconsistent in his story. First, he explained that he and mother “keep the drugs in the room.” But mother panicked and put the drugs under minor’s bed. Later, father explained that the substances were not really drugs but a “baggy of [baking] soda, but there was a pipe in there.”

As to the firearms, father explained that he was not allowed to be around guns because he was a convicted felon. Father was charged with possession of a stolen gun in 2013. According to father, PGM lost her handgun but failed to report it. When father found PGM’s lost gun, he “just plead guilty.” Father did not believe the firearms or ammunition were a danger to minor. On the day of his arrest, mother shot off blanks to celebrate PGM’s birthday.

Mother confirmed that she had shot blanks for PGM’s birthday. Mother also acknowledged that prior to minor’s removal, she used heroin on a daily basis, but then stopped. Mother used marijuana for “sleep and anxiety” about twice per week. Mother started using drugs when she was a teenager. She also used cocaine a couple of times including the night before the incident. Regarding the drugs found under minor’s crib, mother admitted that the substance was heroin; she threw it under the crib because she

got scared. Mother usually kept the heroin with her, not by the baby. Mother's story changed during her interview; she stated that law enforcement found baking soda under the crib, not heroin.

The social worker opined that mother's prognosis for reunification was guarded in that mother did not believe she needed services and her participation in services was contingent on father's willingness to engage in services. The social worker's prognosis was "hopeful" as to father reunifying despite concerns as to father's legal history and use of drugs while caring for minor. The social worker was also concerned that father was residing with PGM, because PGM kept "unlocked guns under her bed," in reach of minor, and since father was a convicted felon he was forbidden to be around firearms.

With regard to relative placement options, the social worker encouraged parents to provide names of relatives for consideration. Parents requested that PGM be considered but the social worker was concerned about placement with PGM since parents and minor were residing with PGM at the time of the removal. Parents indicated that they were willing to move out so placement with PGM could occur. The social worker was also worried about the unlocked firearms that PGM had in the home.

On May 29, 2018, at the jurisdiction and disposition hearing, mother objected to the social worker's recommendation with no affirmative evidence. Father submitted on the recommendation and filed a waiver of rights. Minor's counsel submitted on the recommendation but requested "an approval packet for placement with any of the paternal relatives given the information in the reports." The court granted the request. The court (1) found the allegations true as written; (2) found minor's continuance in

parents' home to be contrary to minor's welfare; and (3) ordered minor be removed from the physical custody of parents. Father was found to be the presumed father.

Reunification services were ordered for parents. The court then set a section 366.21(e) review hearing for November 29, 2018.

On November 29, 2018, CFS recommended that parents' reunification services be terminated and a section 366.26 selection and implementation hearing for adoption be set.

According to the social worker's report prepared for the hearing, mother had not completed her case plan by the status review hearing in November. Mother was required to complete individual counseling, parenting classes, an outpatient program, drug testing, and a 12-step program. By September, mother had completed eight sessions of individual therapy but the therapist recommended additional sessions because mother had difficulty opening up in sessions. By early November 2018, mother had completed only four sessions and the therapist was concerned about mother's "sporadic attendance" and limited progress in therapy. Moreover, mother participated in only seven out of 12 parenting sessions, and failed to provide proof that she had completed a 12-step program. Additionally, mother failed to complete her outpatient substance abuse program even though the program received two referrals for services from CFS. Furthermore, out of 12 required drug tests, she only tested once. Mother admitted that the reason for her failures to test was because she was taking methadone.

Father's also failed to complete his case plan. Although father was required to complete individual counseling, a parenting class, an outpatient program, drug testing and a 12-step program, he did not start any of the required components. During the

reunification period, father was in and out of custody. He was rearrested for possession of illicit substances and two unlocked guns, released for a short period time, but went back to jail for a violation of probation. Father remained incarcerated in local custody at the time of the hearing on November 29, 2018.

According to the social worker's report, father was at PGM's home when he was arrested for possession of firearms and drugs. PGM failed to inform the social worker about father's arrest, even though she was in contact with the social worker and attended monthly visits with minor.

In August 2018, mother reported that she was living at Motel 8, but had "recently" moved back in with PGM. PGM's name was submitted for RFA (Resource Family Approval) about two months prior but her home had not been assessed yet. Mother also identified PGM as part of her support network. PGM was unaware of mother's lack of participation in reunification services and was surprised to learn about mother's lack of progress from the social worker.

Minor's placement continued in a foster home; it was not a concurrent planning home.

At the section 366.21(e) hearing on November 29, 2018, parents set the matter contested on the issue of termination of services. As to the issue of relative placement, father's counsel asked the court not to rule out PGM because "the report has some concerning statements about father being arrested at [PGM's] home." The court asked PGM the following:

"[Court]: Ma'am, was your son arrested at your home?"

“[PGM]: Yes, he was.

“[Court]: I am going to rule her out as a potential placement. My concern is that that deletes valuable resources when it’s not a likely placement and there may be other relatives available and that would slow down that process. So I will ask to assess any available relatives. I will rule out the paternal grandmother as an appropriate placement, and I will also give authority to place in a concurrent planning home as appropriate.”

Counsel for both mother and father objected. Minor’s counsel reiterated the request “for the approval packet for any placement with the paternal relatives at this time.” The court confirmed that an approval packet was required for placement with the paternal relatives and set a contested section 366.21(e) hearing for February 21, 2019.

On December 5, 2018, PGM filed a timely notice of appeal challenging the court’s order to rule her out as a relative placement.

DISCUSSION

PGM contends that “the juvenile court summarily and erroneously removed grandmother from consideration as a relative caretaker, instead of considering the required factors, and instead of allowing the Agency to complete its relative assessment.”

“In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” (§ 361.3, subd. (a).) Section 361.3, subdivision (a)(7)(H): “(a) In any case in which a child is removed from the physical custody of his or her parents pursuant to section 361, preferential consideration shall be given to a request by a relative of the child for placement of the

child with the relative.” Section 361.3 assures that, when a child is taken from his or her parents’ care and requires placement outside the home, an interested relative’s application for placement will be considered before a stranger’s request. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

However, the relative placement preference established by section 361.3 does not constitute “a relative placement *guarantee*.” (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.) Nor does section 361.3 “create an evidentiary presumption that relative placement is in a child’s best interests.” (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855; see *In re Stephanie M.* (1994) 7 Cal.4th 295, 321 [construing former section 361.3].)

The juvenile court must still determine whether placement with the relative is appropriate, taking into account a host of factors. (*Stephanie M.*, at p. 321.) These factors include (1) the best interest of the child; (2) the good moral character of the relative and any other adult living in in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect; (3) the relative’s ability to provide a safe, secure, and stable environment; and (4) the relative’s ability to protect the child from his or her parents. (§ 361.3, subd. (a).)

“The best interest of the child is the fundamental goal of the juvenile dependency system, underlying the three primary goals of child safety, family preservation, and timely permanency and stability. [Citation.] ‘The concept of a child’s best interest “is an elusive guideline that belies rigid definition. Its purpose is to maximize a child’s

opportunity to develop into a stable, well-adjusted adult.” ’ ’ (In re William B. (2008) 163 Cal.App.4th 1220, 1227.)

In this case, minor’s removal occurred *from* PGM’s home. At the time of removal, parents resided with PGM and minor, as detailed in PGM’s Relative: Family Find and ICWA Inquiry form. Therefore, parents were abusing controlled substances while residing with PGM, and mother fired gunshots to celebrate PGM’s birthday. Although PGM expressed an interest in minor’s placement with her at the detention hearing, neither father nor mother named PGM for consideration at that time. Moreover, although the social worker urged parents to provide the names of relatives for placement consideration, the social worker never indicated that CPS wanted PGM to be approved for placement. Instead, the social worker was carrying out her duty to identify and assess any available relatives under section 361.3.

Additionally, at the time of minor’s detention, the following were found in PGM’s home: “[A]n AR-15 with a 40 round magazine, 9mm handgun, [a] bulletproof vest, 10 grams of heroin, cocaine, and methamphetamine/crack pipes.” Although these items were found in her home, in her opening brief, PGM questions whether she was aware about these items being in her home. She stated: “The juvenile court never asked this question, bur rather just assumed the affirmative.” However, minor came to the attention of CFS when law enforcement was called because mother fired celebratory gun shots at PGM’s home to celebrate PGM’s birthday. Moreover, father disclosed to the social worker that PGM had “unlocked guns under her bed,” easily accessible to minor, and with the knowledge that father was a convicted felon.

Similarly, when law enforcement discovered a variety of drugs in PGM's home in April of 2018, much of the heroin was located under minor's crib. Father admitted to having used heroin earlier that day. Also, on May 3, 2018, when the investigating social worker made an unannounced visit at PGM's home, parents were visibly under the influence of a controlled substance, and admitted to using heroin that day. Father admitted to having a history of drug abuse, which started when he was about 17 to 18 years old. If PGM was unaware about the guns or parents' substance abuse issues occurring in PGM's home, we would find it equally as disturbing that PGM did not have knowledge about issues in her home that could potentially harm minor.

By November 2018, there was no evidence that the situation at PGM's residence had changed. Father was arrested in PGM's home for violating probation. Mother, who named PGM a part of her support network, admitted to using methadone and failed to drug test for CFS.

Based on the facts summarized *ante*, PGM should have been aware of what was occurring in her home while she was residing with parents. If PGM chose to disregard the evidence of drug use by parents, and the unsafe possession of firearms in her home, it would cast serious doubt as to PGM's ability to provide a safe and secure environment for minor. Returning minor to this home would not be in minor's best interests.

Moreover, "[w]ith regard to the parents' residence in [PGM]'s home, the juvenile court likewise failed to explore the possibility of moving them out, something mother and father expressed every willingness to do in order to facilitate [minor's] placement in [PGM]'s care." We disagree with PGM's assessment. The social worker indicated PGM

would not be assessed because parents resided with her. Parents stated that they were willing to move out and “live in their trailer and rent a space somewhere” in order for placement to occur. In June of 2018, father was arrested and released for a short time. In August of 2018, when the social worker met with mother to discuss mother’s participation in the case plan, the social worker learned that father had been released from jail. The social worker also noted that father dropped off mother at her visits. At the status review hearing on November 29, 2018, father had already been in local custody, where he was incarcerated following another arrest for violating probation. PGM admitted that father was arrested at PGM’s home. The evidence, therefore, showed that between August and November of 2018, father continued to reside with PGM. With regard to mother’s residence, in her early August meeting with the social worker, mother reported that she had lived in a Motel 8 but “recently” moved back in with PGM. Therefore, at the time the juvenile court reviewed PGM’s suitability for placement in November of 2018, mother continued to reside in PGM’s home. Hence, six months after the detention hearing, mother still resided with PGM; and, when he was not incarcerated, father also resided with PGM. The juvenile court had over six months to observe parents’ failure to follow through with their assertion in May of 2018 that they would move out of PGM’s home.

Notwithstanding the above, PGM contends that the court “short-circuited the Agency’s assessment process without considering *all* the factors set forth in section 361.3, subdivision (a).” PGM cites *In re Antonio G.* (2018) 159 Cal.App.4th 369 (*Antonio G.*) in support of her argument. The case, however, is distinguishable.

In *Antonio G.*, *supra*, 159 Cal.App.4th at p. 372, the dependent children were placed with the maternal grandmother at detention. When the maternal grandmother allowed the children to have unsupervised visits and overnight stays with the mother, the child protection agency (agency) removed the children pursuant to a section 387 petition. Then children were then placed with a non-related extended family member. (*Ibid.*) Subsequently, the juvenile court terminated the mother's services and set a section 366.26 hearing. (*Id.* at p. 373.) The children's caregiver then informed the agency that she was unable to continue caring for the children, which required a search for a new placement. (*Ibid.*) The two children were separated and placed in two separate foster homes. (*Id.* at p. 387.) The maternal grandmother sought placement of the children; the agency denied the request because the children previously had been removed from the maternal grandmother. (*Id.* at p. 373.) The maternal grandmother filed a section 388 petition seeking placement; the court denied the section 388 petition. (*Id.* at pp. 373, 376.) On appeal, the court reversed; it held that the relative placement preference required that the agency at least conduct an assessment of the maternal grandmother even though the children had been removed from there. (*Id.* at pp. 377-379.)

The facts herein are different from the facts in *Antonio G.* In this case, minor was never placed with PGM at detention; the court never removed minor from PGM's care pursuant to a section 387 petition; minor was not part of a sibling group placed in separate foster homes. Additionally, in this case, parents still continued to receive services. Therefore, we do not find *Antonio G.* to support PGM's argument.

In this case, we find that the best interest of minor would not be served by placing her with PGM. The court gave PGM an opportunity to be assessed by placing her in the front of the line for relative assessment at the time of the detention. Six months later, PGM's home presented the same set of problems that gave rise to minor's initial removal. Moreover, the evidence presented showed that PGM continued to ignore mother's continued substance abuse and father's participation in criminal activities. Under such circumstances, the court had no other reasonable choice but to conclude that returning minor to the same conditions from which she had been removed would not be in minor's best interest. Therefore, the court did not abuse its discretion when it ruled out placing minor with PGM.

DISPOSITION

The juvenile court's findings and orders are affirmed.

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MILLER

Acting P. J.

We concur:

FIELDS

J.

RAPHAEL

J.